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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 593.

FRANCES PERKINS, Individually and as Secretary of Labor of the United States, et al., *Petitioners*,

v.

LUKENS STEEL COMPANY, a corporation, et al., *Respondents*.

APPENDIX

to

RESPONDENTS' BRIEF IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

TABLE OF CONTENTS.

PAGE

APPENDIX A1—Copy of the Public Contracts Act. 3

APPENDIX A2—Copy of the Regulations prescribed by the Secretary of Labor under the Public Contracts Act, as in effect to April, 1939..... 11

APPENDIX B—Map of the United States showing the six areas designated as "localities" in the determination dated January 16, 1939 (hereinafter called the Determination), made by Charles V. McLaughlin, as Acting Secretary of Labor, pursuant to the Public Contracts Act, and the prevailing minimum wages "established" in each "locality."

APPENDIX C—Copy of a map contained in the February, 1939, issue of the Labor Information Bulletin of the Department of Labor, which shows the areas in which the four wage rates established by the Determination were "set."

APPENDIX D—Map of the United States depicting (1) the location of plants in the Iron and Steel Industry concerning which wage data are set forth in the Report of the Public Contracts Board, dated October 27, 1938, upon which the Determination was based, (2) the common labor base rate (the minimum wage) paid at each such plant, and (3) a classification of such plants by the number of wage earners employed thereat.

APPENDIX A1

[PUBLIC—No. 846—74TH CONGRESS]
[S. 3055]

AN ACT

To provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000, there shall be included the following representations and stipulations:

(a) That the contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract;

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the con-

tract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week;

(d) That no male person under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract; and

(e) That no part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

SEC. 2. That any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 1 hereof shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of such contract, the sum of $10 per day for each male person under sixteen years of age or each female person under eighteen years of age, or each convict laborer knowingly employed in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract; and, in addition, the agency of the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter

into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of said contract set forth in section 1 hereof may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided,* That no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

SEC. 3. The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by this Act. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

SEC. 4. The Secretary of Labor is hereby authorized and directed to administer the provisions of this Act and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the ad-

ministration of this Act and to prescribe rules and regulations with respect thereto. The Secretary shall appoint, without regard to the provisions of the civil-service laws but subject to the Classification Act of 1923, an administrative officer, and such attorneys and experts, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as he may from time to time find necessary for the administration of this Act. The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as herein provided, and prosecute any inquiry necessary to his functions in any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act.

SEC. 5. Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of this Act, and on complaint of a breach or violation of any representation or stipulation as herein provided, the Secretary of Labor, or an impartial representative designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the applica-

tion by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof; and shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive in any court of the United States; and the Secretary of Labor or authorized representative shall have the power, and is hereby authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of this Act.

SEC. 6. Upon a written finding by the head of the contracting agency or department that the inclusion in the proposal or contract of the representations or stipulations set forth in section 1 will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice or public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the terms of an existing contract respecting minimum rates of pay and maximum hours of labor as he may find necessary and proper in the public interest or to prevent injustice and undue hardship. The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act respecting minimum rates of pay and maximum hours of labor or the extent of the application of this Act to contractors, as hereinbefore described. Whenever the Sec-

retary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected.

SEC. 7. Whenever used in this Act, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

SEC. 8. The provisions of this Act shall not be construed to modify or amend title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved May 3, 1933 (commonly known as the Buy American Act), nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March 3, 1931 (commonly known as the Bacon-Davis Act), as amended from time to time, nor the labor provisions of title II of the National Industrial Recovery Act, approved June 16, 1933, as extended, or of section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935; nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act to provide for the diversification of employment of Federal prisoners, for their training and schooling in trades and occupations, and for other purposes", approved May 27, 1930, as amended and supplemented by the Act approved June 23, 1934.

SEC. 9. This Act shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market; nor shall this Act apply to perishables, including dairy, livestock and nursery prod-

ucts, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in this Act shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934.

SEPARABILITY CLAUSE

SEC. 10. If any provision of this Act, or the application thereof to any persons or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

SEC. 11. This Act shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from the effective date of this Act: *Provided, however*, That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

Approved, June 30, 1936.

APPENDIX A2

No. 504—REGULATIONS PRESCRIBED BY THE SECRETARY OF LABOR UNDER PUBLIC ACT NO. 846, SEVENTY-FOURTH CONGRESS

(SERIES A)

By virtue of the authority vested in the Secretary of Labor by section 4 of the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", (Act of June 30, 1936, Public, No. 846, 74th Cong.) and in order to establish uniform procedure under said act, the following Regulations are hereby prescribed:

PART I.—CONTRACT STIPULATIONS

ARTICLE 1. (Insertion of Stipulations).—Except as hereinafter directed, in every contract made and entered into by an executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment, with respect to which invitations for bids are issued on or after September 28, 1936, the contracting officer shall cause to be inserted in such invitation or the specifications and in such contract, the following stipulations:

Representations and stipulations pursuant to Public Act No. 846, Seventy-fourth Congress:

(*a*) The contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

(*b*) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account,

not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: *Provided, however,* That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

(*c*) No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor.

(*d*) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

(*e*) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under such contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

(*f*) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of $10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the perform-

ance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

(*g*) The contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

(*h*) The foregoing stipulations shall be deemed inoperative, if this contract is for a definite amount not in excess of $10,000.

ART. 2. (Statutory Exemptions).—Inclusion of the stipulations herein enumerated is not required in the following instances:

(*a*) Where the contracting officer is authorized by statute or otherwise to purchase in the open market without advertising for proposals;

(*b*) Where the contract relates to perishables, including dairy, livestock, and nursery products; ("perishables" cover

products subject to decay or spoilage and not products canned, salted, smoked, or otherwise preserved);

(c) Where the contract relates to agricultural or farm products processed for first sale by the original producers;

(d) Where the contract is by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof;

(e) Where the contract is with a common carrier for carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line, where published tariff rates are in effect;

(f) Where the contract is for the furnishing of service by radio, telephone, telegraph, or cable companies, subject to the Federal Communications Act of 1934.

PART II.—ADMINISTRATIVE REGULATIONS

ART. 101. (Manufacturer or Regular Dealer):—A bidder or contractor shall be deemed to be a "manufacturer" or "regular dealer" within the meaning of the stipulation required by section 1 (a) of the act and article 1 (a) of these Regulations if he falls within one of the following categories:

(a) A manufacturer is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(b) A regular dealer is a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

Except as hereinafter provided, every bid received from any bidder who does not fall within one of the foregoing categories shall be rejected by the contracting officer.

Whenever justice and the public interest will be served, bids for a contract or class of contracts will be exempted

from the foregoing requirement by the Secretary of Labor upon the request of the head of the contracting agency or department when accompanied by his finding of fact that it will be so difficult to obtain satisfactory bids for the contract or class of contracts under the stipulated restrictions, that the conduct of Government business will be seriously impaired.

ART. 102. (Employees Affected).—The stipulations shall be deemed applicable only to employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment required under the contract and shall not be deemed applicable to office or custodial employees.

ART. 103. (Overtime).—Employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract may be employed in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, provided such persons shall be paid for any hours in excess of such limits the overtime rate of pay which has been set therefor by the Secretary of Labor.

Until otherwise set by the Secretary of Labor the rate of pay for such overtime shall be one and one-half times the basic hourly rate or piece rate received by the employee.

If in any 1 week or part thereof an employee is engaged in work covered by the contractor's stipulations, his overtime shall be computed after 8 hours in any 1 day or after 40 hours in any 1 week during which no single daily total of employment may be in excess of 8 hours without payment of the overtime rate.

ART. 104. (Dealer as Agent of Undisclosed Principal).—Whenever a dealer, to whom a contract within the Act and Regulations has been awarded, causes a manufacturer

to deliver directly to the Government the materials, supplies, articles, or equipment required under the contract, such dealer will be deemed the agent of the manufacturer in executing the contract. As the principal of such agent the manufacturer will be deemed to have agreed to the stipulations contained in the contract.

ART. 201. (Breach of Stipulations).—Whenever the Department of Labor notifies the head of a contracting agency that a contractor is liable for liquidated damages by reason of a breach of stipulations as provided in section 2 of the Act, there shall be withheld from any balance due under the contract such amount as may be necessary to satisfy such liability pending final disposition of the case.

Whenever a final determination of a breach of stipulations is made, the Secretary of Labor will furnish to the contracting agency a copy of the findings and decision with such recommendations as will assist the contracting agency in determining whether or not the contract should be canceled for such breach.

ART. 501. (Records of Employment).—Every contractor subject to the provisions of the Act and these Regulations shall maintain the following records of employment which shall be available for the inspection and transcription of authorized representatives of the Secretary of Labor:

(*a*) Name, address, sex, and occupation of each employee covered by the contract stipulations.

(*b*) Date of birth of each such employee under 21 years of age.

(*c*) Wage and hour records for each such employees including the rate of wages and the amount paid each pay period, the hours worked each day and each week, and the period during which each such employee was engaged on a Government contract with the number of such contract. Compliance with this subsection shall be deemed complete if wage and hour records for

all employees in the plant are maintained during the period between the award of any Government contract and the date of delivery of the materials, supplies, articles, or equipment: *Provided*, That where no separate records for employees engaged on Government contracts are maintained, it shall be presumed until affirmative proof is presented to the contrary that all employees in the plant, from the date of award of any such contract until the date of delivery of the materials, supplies, articles, or equipment, were engaged on such Government contract.

Such records shall be kept on file for at least 1 year after the termination of the contract.

ART. 601. (Requests for Exceptions and Exemptions).—Request for the exception or exemption of a contract or class of contracts from the inclusion or application of one or more of those stipulations required by article 1 must be made by the head of a contracting agency or department and shall be accompanied with a finding by him setting forth reasons why such inclusion or application will seriously impair the conduct of Government business.

Request for the exception or exemption of a stipulation respecting minimum rates of pay and maximum hours of labor contained in an existing contract must be made jointly by the head of the contracting agency and the contractor and shall be accompanied with a joint finding by them setting forth reasons why such exception or exemption is desired.

All requests for exceptions or exemptions shall be transmitted through the Procurement Division of the Treasury for submission to the Department of Labor for consideration and shall be returned through the Procurement Division.

ART. 602. (Decision Concerning Exceptions and Exemptions).—Decisions concerning exceptions and exemptions shall be in writing and approved by the Secretary of Labor or officers prescribed by him, originals being filed

in the Department of Labor, and certified copies shall be transmitted to the department or agency originating the request, to the Comptroller General, and to the Procurement Division of the Treasury. All such decisions shall be promulgated to all contracting agencies by the Procurement Division of the Treasury.

ART. 603. (Administrative Exemptions).—The following classes of contracts have been exempted from the application of article 1 of these Regulations pursuant to the procedure required under section 6 of the act:

(*a*) Contracts for public utility services including electric light and power, water, steam, and gas;

(*b*) Contracts which are to be performed outside the geographic limits of the United States, its Territories, and the District of Columbia, except where such performance requires a shipment from within such geographic limits;

(*c*) Contracts covering purchases against the account of a defaulting contractor where the stipulations required herein were not included in the defaulted contract.

ART. 701. (Definition of "Person").—Whenever used in these Regulations, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

ART. 1101. (Minimum Wages).—Until a determination of the prevailing minimum wage for a particular industry or group of industries has been made by the Secretary of Labor prior to the invitation for bids, the stipulation with respect to wages in section 1 (*b*) of the Act will be inoperative, as provided in article 1 (*b*) of these Regulations.

Determinations of prevailing minimum wages or changes therein will be published in the Federal Register and sent to contracting officers through circular letters of the Procurement Division of the Treasury. Such determinations will be effective upon the dates fixed therein.

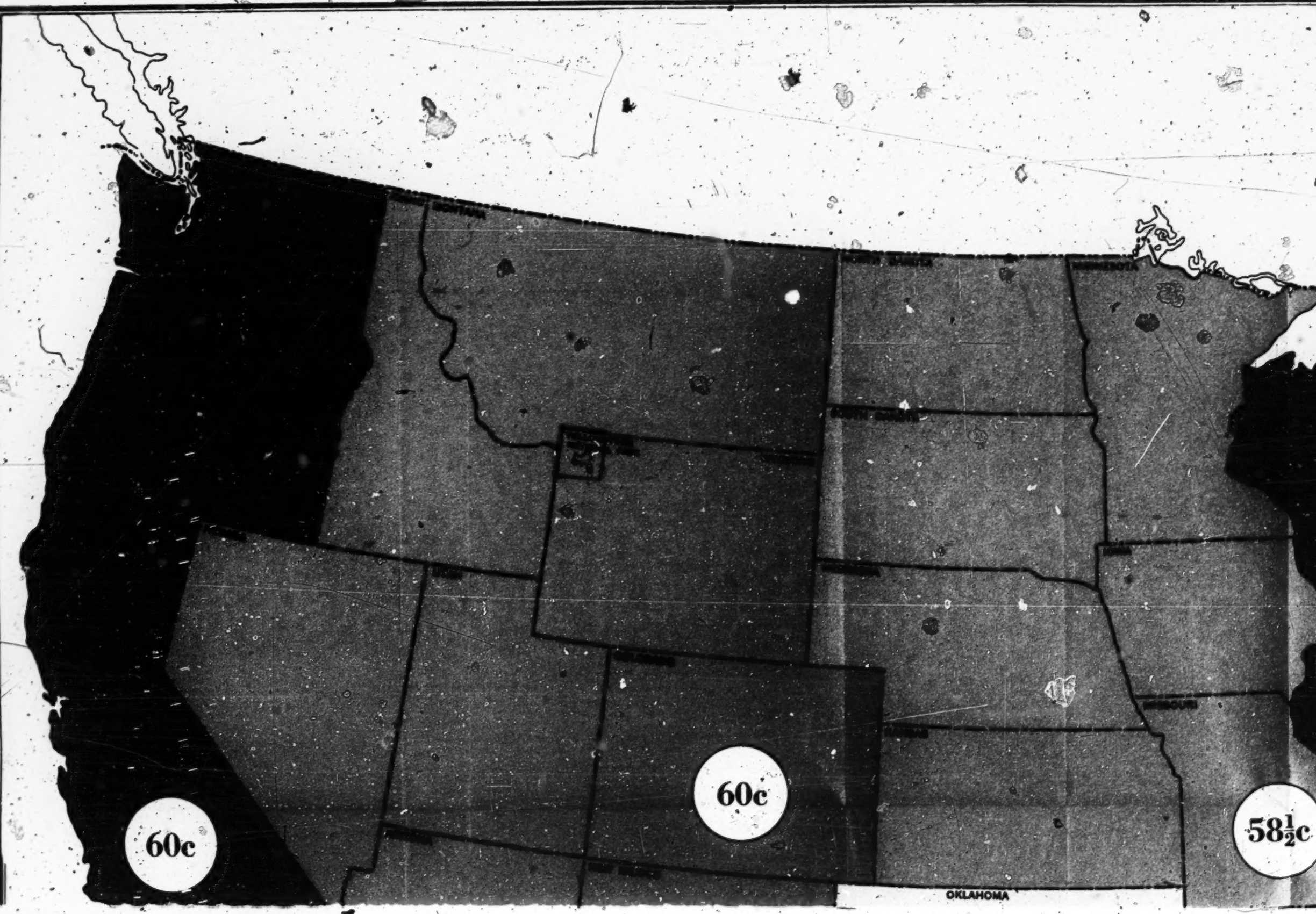
ART. 1201. (Reports of Contracts Awarded).—Whenever the contracting officer shall award a contract in which the stipulations required under article 1 are operative, he shall furnish the Department of Labor in duplicate on forms provided for this purpose, a statement showing the name of the contracting agency, the purchase order number, the material purchased, the date of award, the contract price, the proposed date of delivery, the contractor's name and address, and the name and location of the plant or plants fabricating or supplying the subject matter of the contract.

ART. 1202. (Complaints).—Whenever any officer or employee of the United States Government or of any agency thereof has any knowledge of or receives any complaint with respect to a breach or violation of the stipulations required under article 1, he shall transmit such complaint according to the usual practice in his department to the Department of Labor together with such other information as he has in his possession.

ART. 1203. (Other Contracts).—Nothing in these Regulations shall be construed as impairing the authority possessed by any contracting agency to require labor standards in contracts not covered by this act.

FRANCES PERKINS,
Secretary of Labor.

WASHINGTON, D. C., *September 14, 1936.*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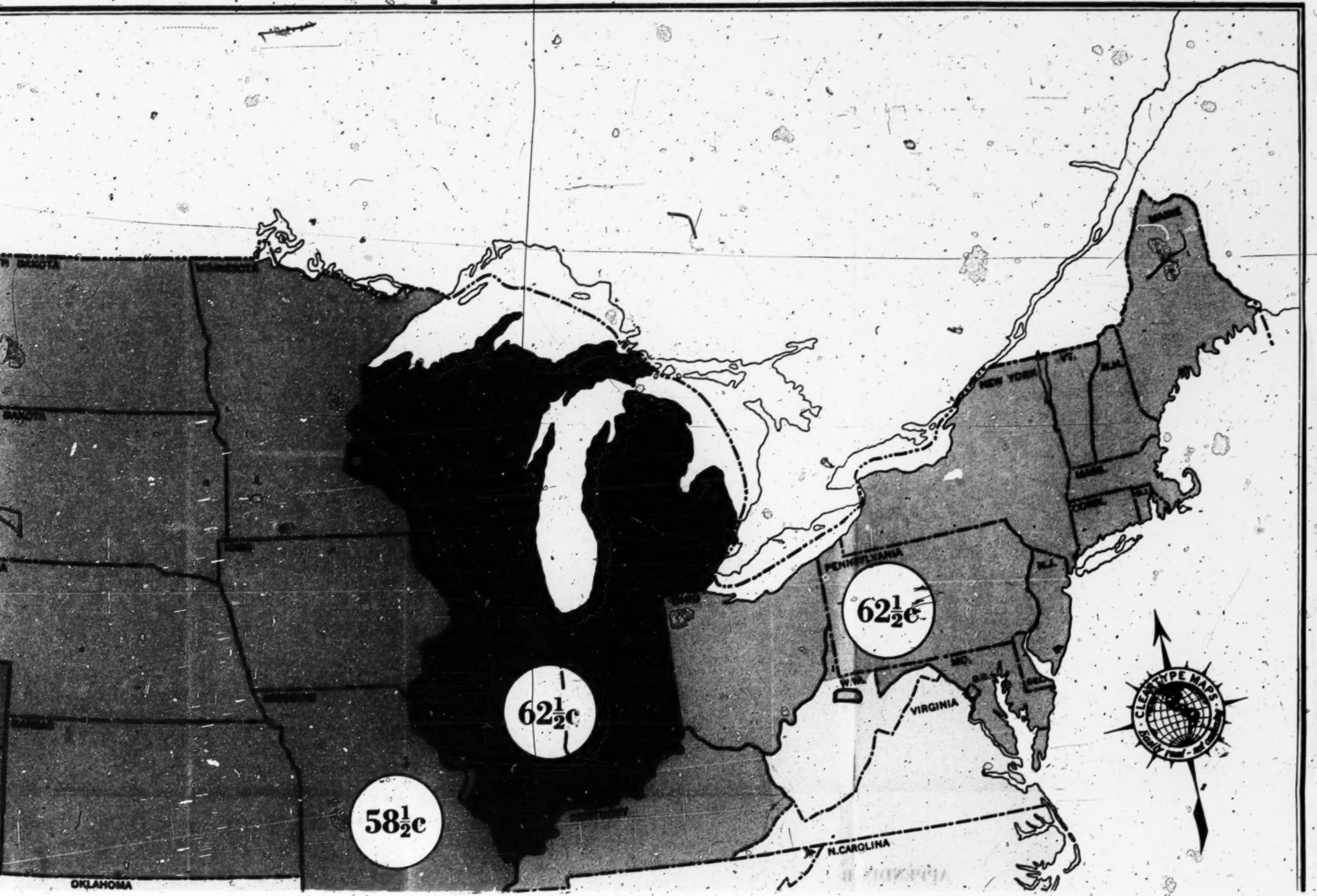
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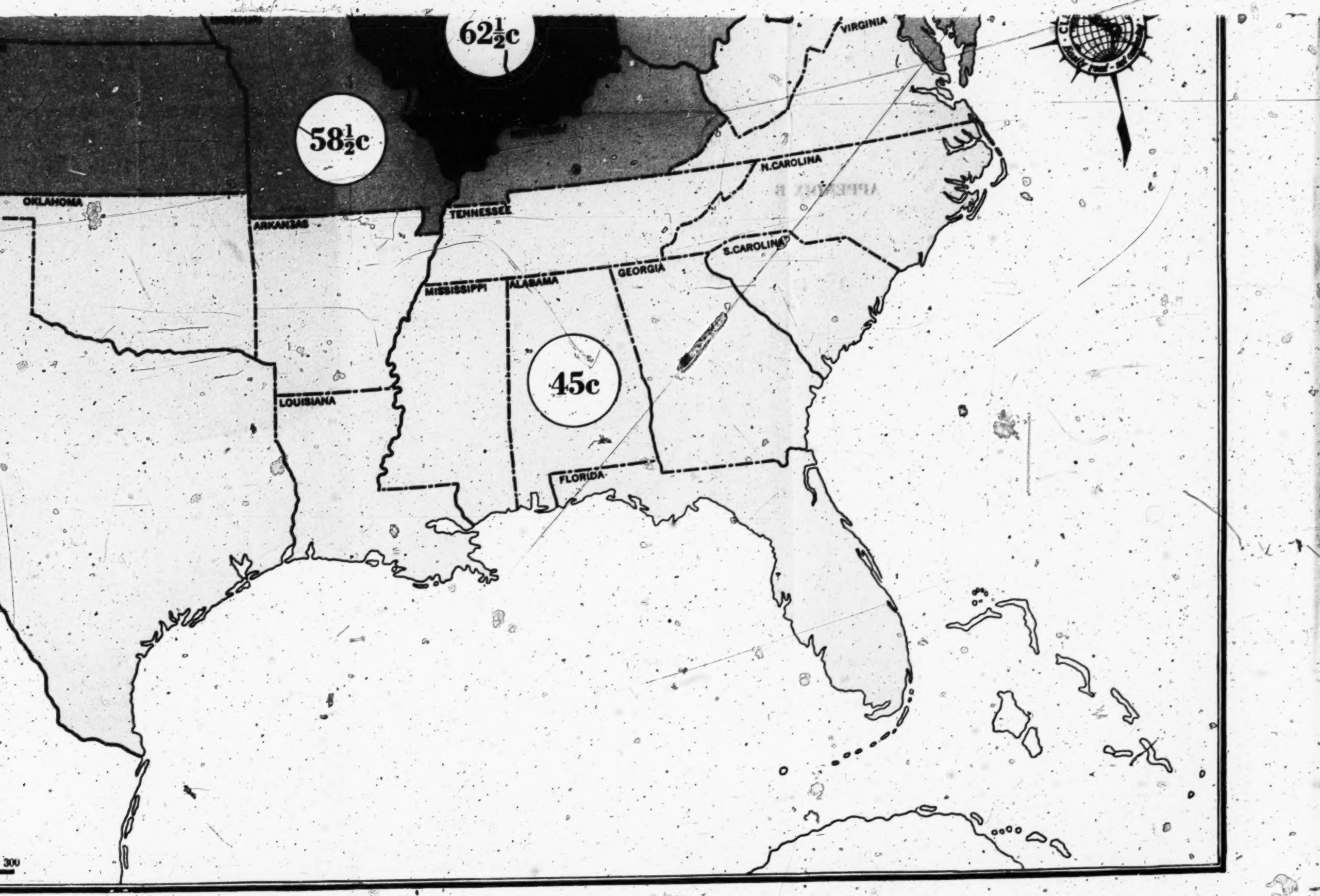
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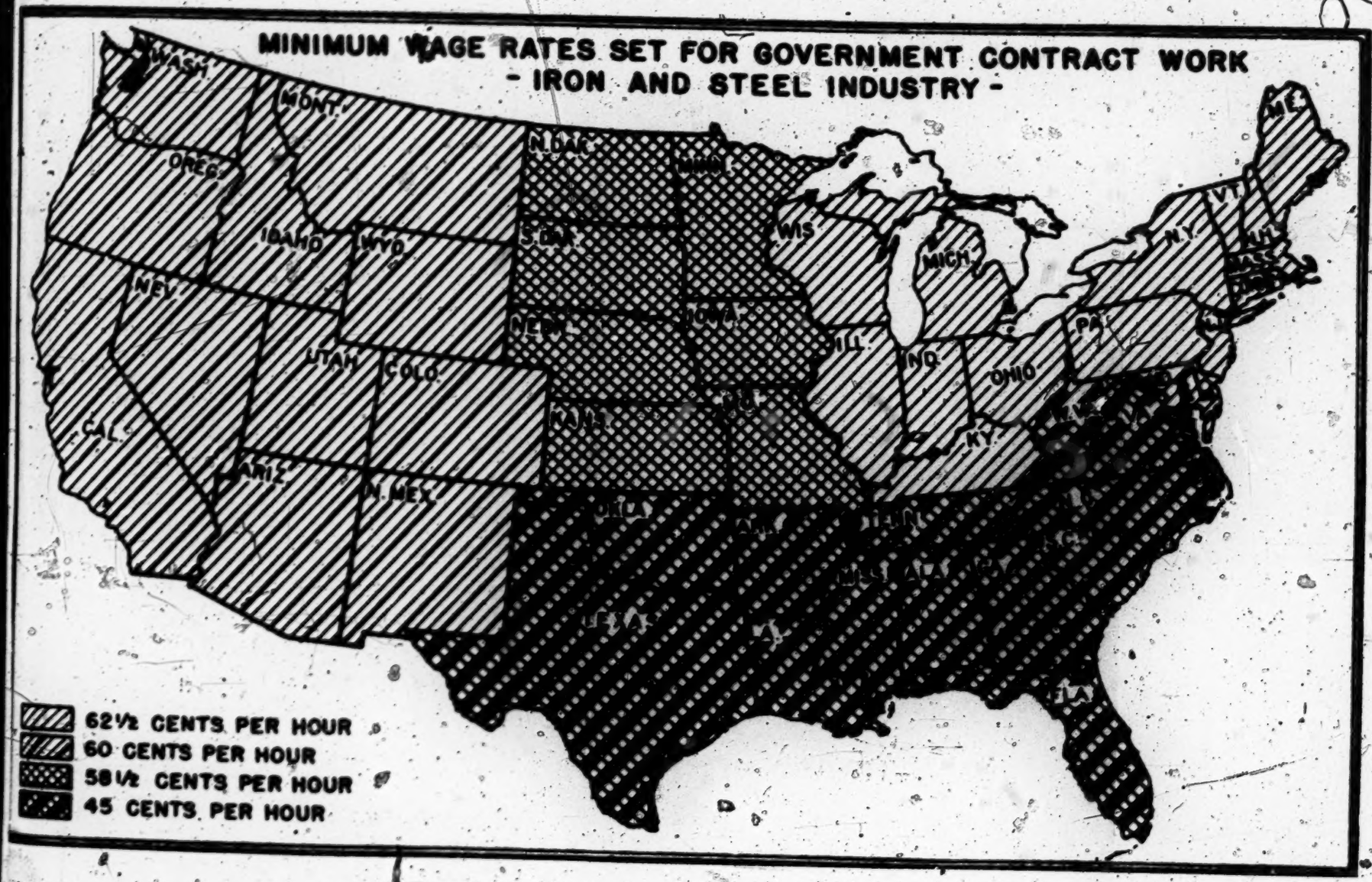
APPENDIX C


MINIMUM WAGE RATES SET FOR GOVERNMENT CONTRACT WORK
- IRON AND STEEL INDUSTRY -
WASH.
MONT.
OREG.
IDAHO
WYO.
NEV.
UTAH
COLO.
CAL.
ARIZ.
N. MEX.
N. DAK.
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MISS.
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GA.
FLA.
S. C.
N. C.
VA.
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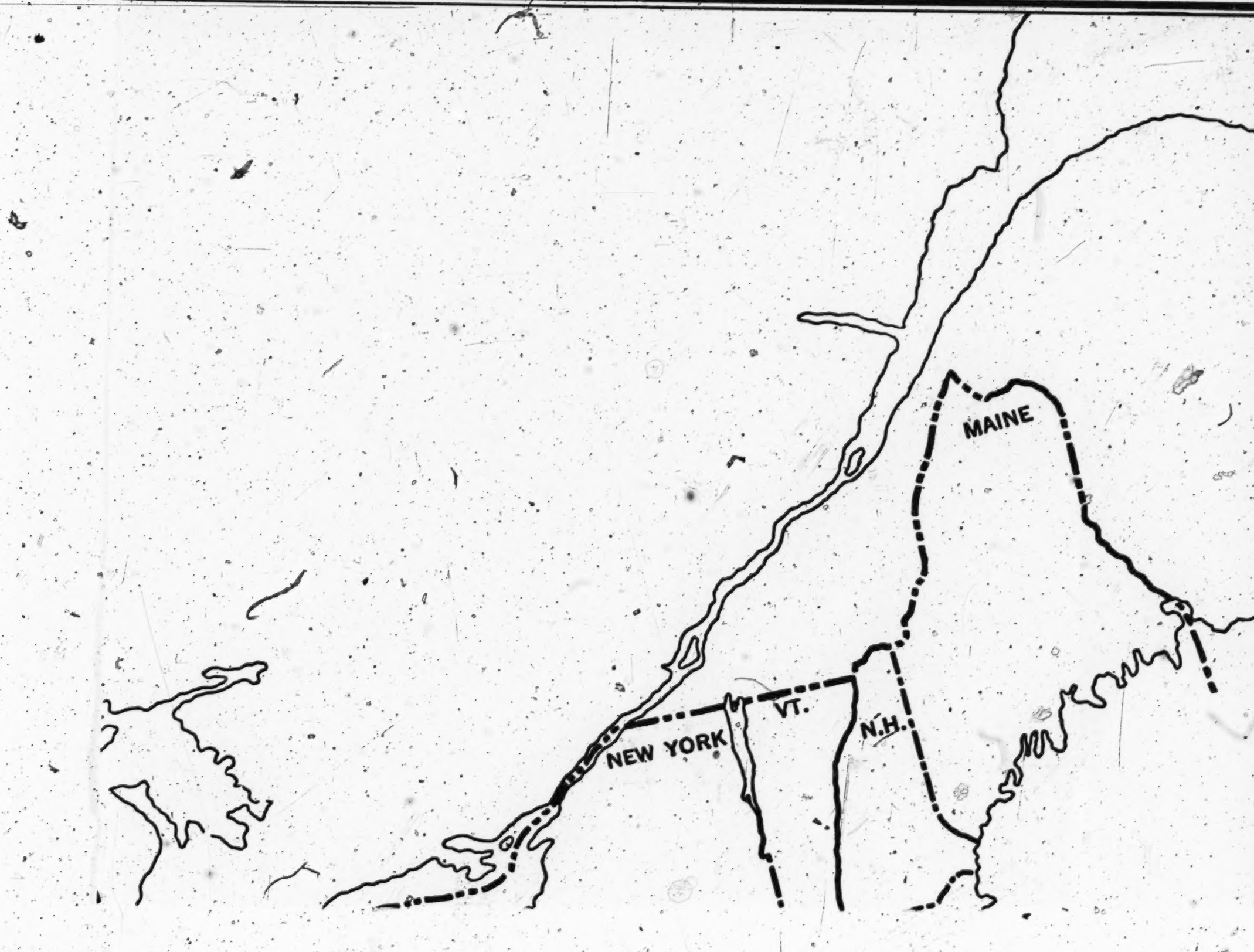
62½ CENTS PER HOUR
60 CENTS PER HOUR
58½ CENTS PER HOUR
45 CENTS PER HOUR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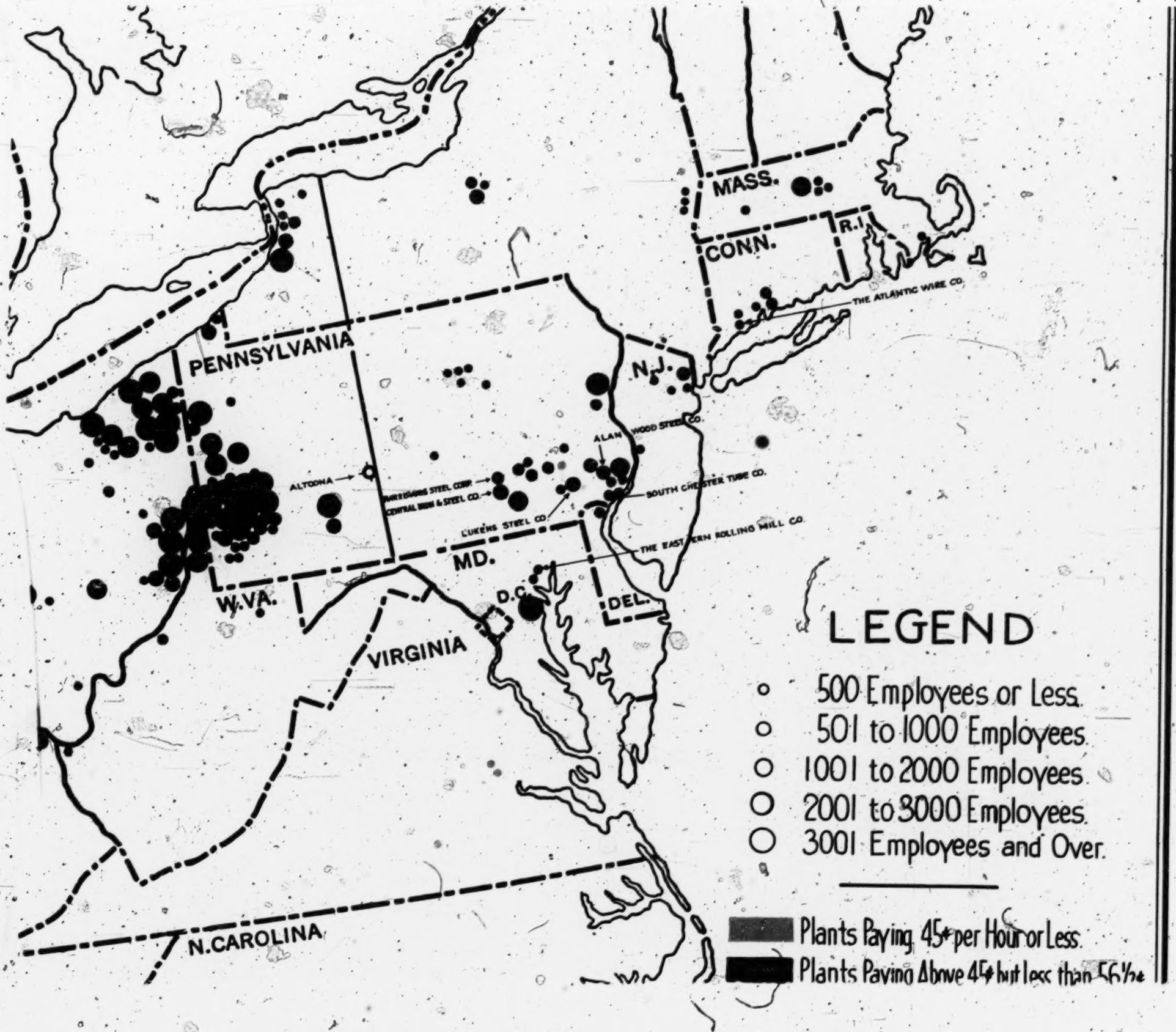
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LUKENS STEEL CO.
THE EASTERN ROLLING MILL CO.
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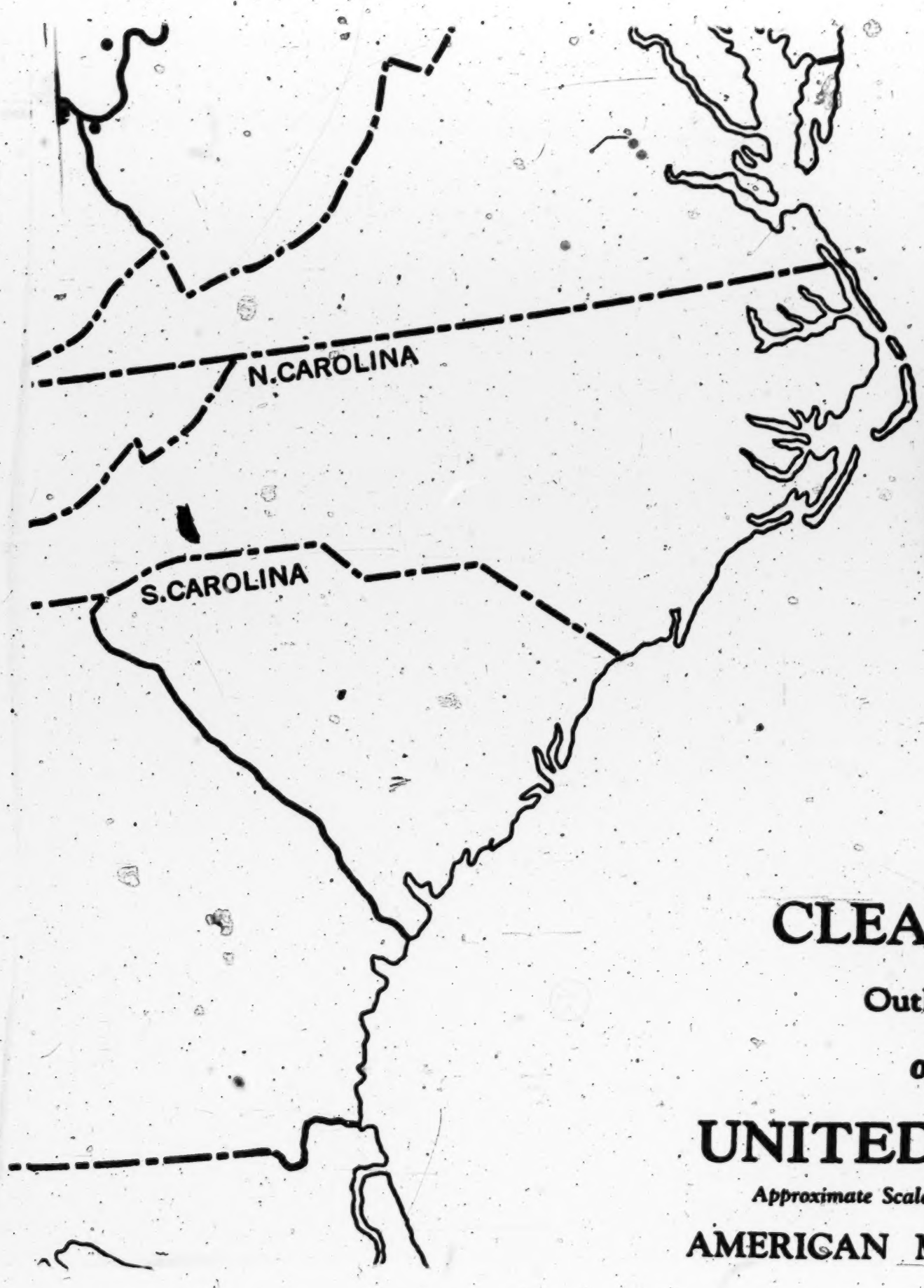
VIRGINIA
N.CAROLINA
LEGEND
500 Employees or Less.
501 to 1000 Employees.
1001 to 2000 Employees.
2001 to 3000 Employees.
3001 Employees and Over.
Plants Paying 45¢ per Hour or Less.
Plants Paying Above 45¢ but Less than 56½¢



- 500 Employees or Less.
- 501 to 1000 Employees.
- 1001 to 2000 Employees.
- 2001 to 3000 Employees.
- 3001 Employees and Over.

- Plants Paying 45¢ per Hour or Less.
- Plants Paying Above 45¢ but Less than 56½¢
- Plants Paying 56½¢ and 57¢.
- Plants Paying Above 57¢ but Less than 62½¢
- Plants Paying 62½¢ and Over.

CLEARTYPE

Outline Map

of the

UNITED STATES

Approximate Scale - 39 Miles to the Inch

AMERICAN MAP COMPANY

of the

UNITED STATES

Approximate Scale - 39 Miles to the Inch

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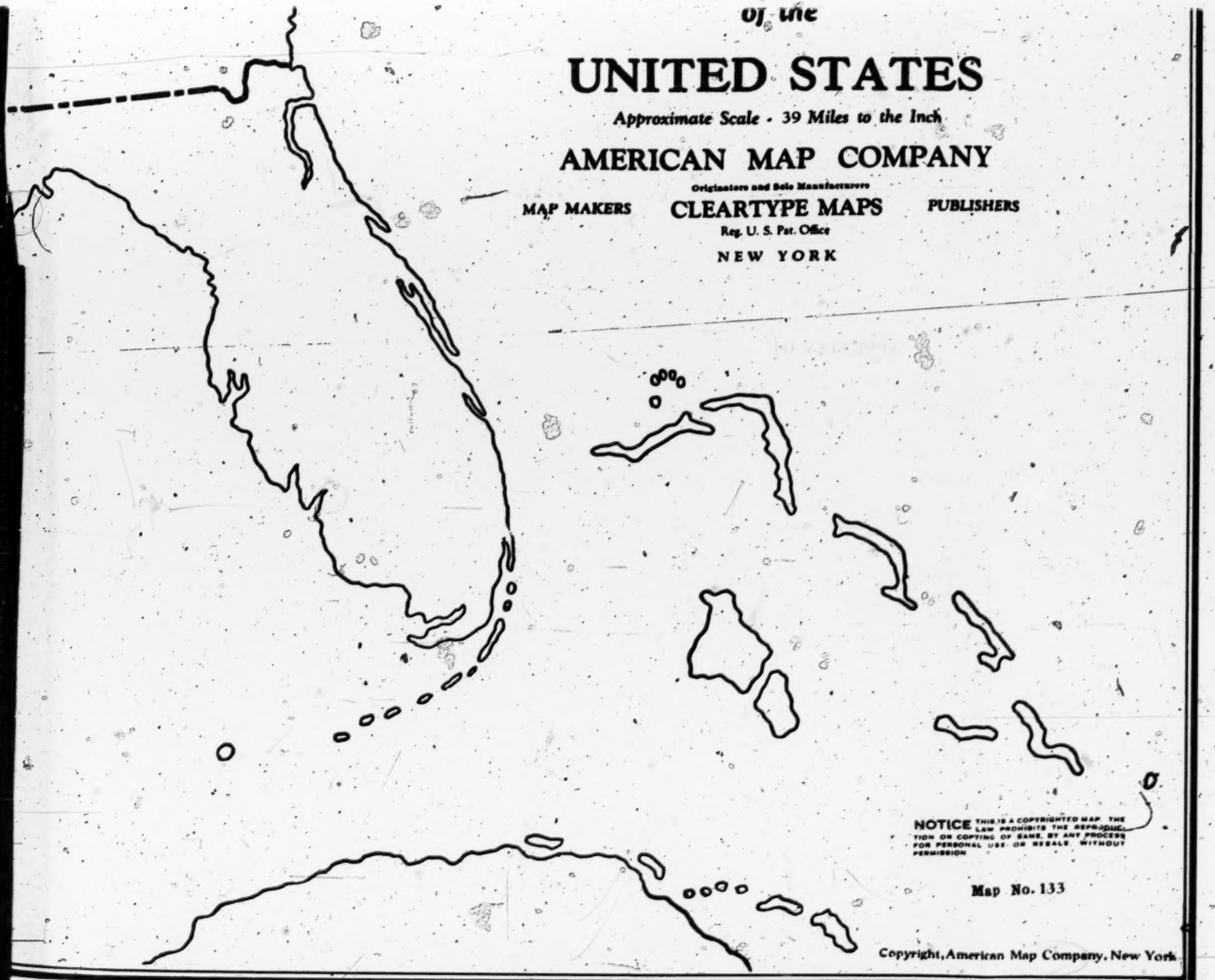

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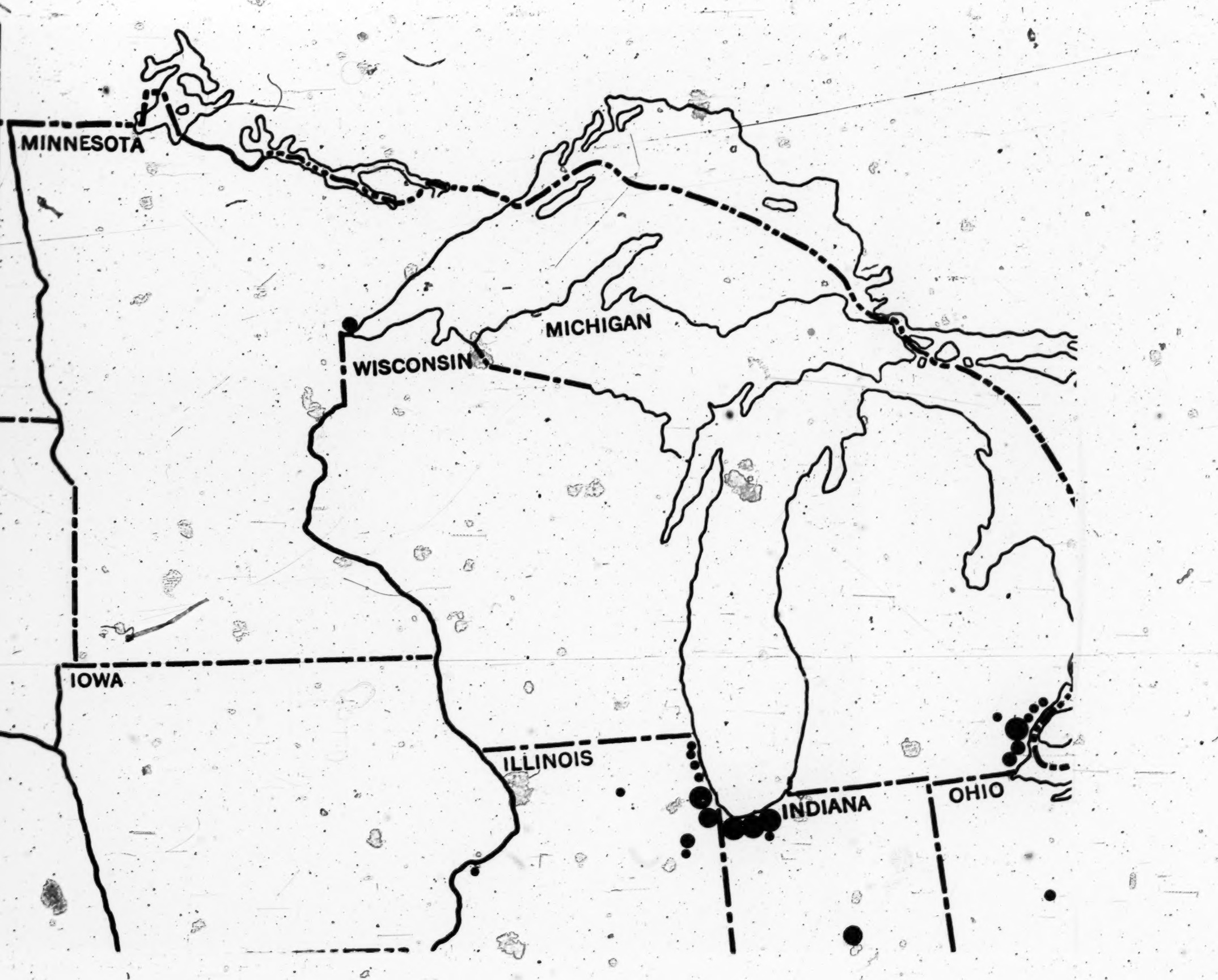
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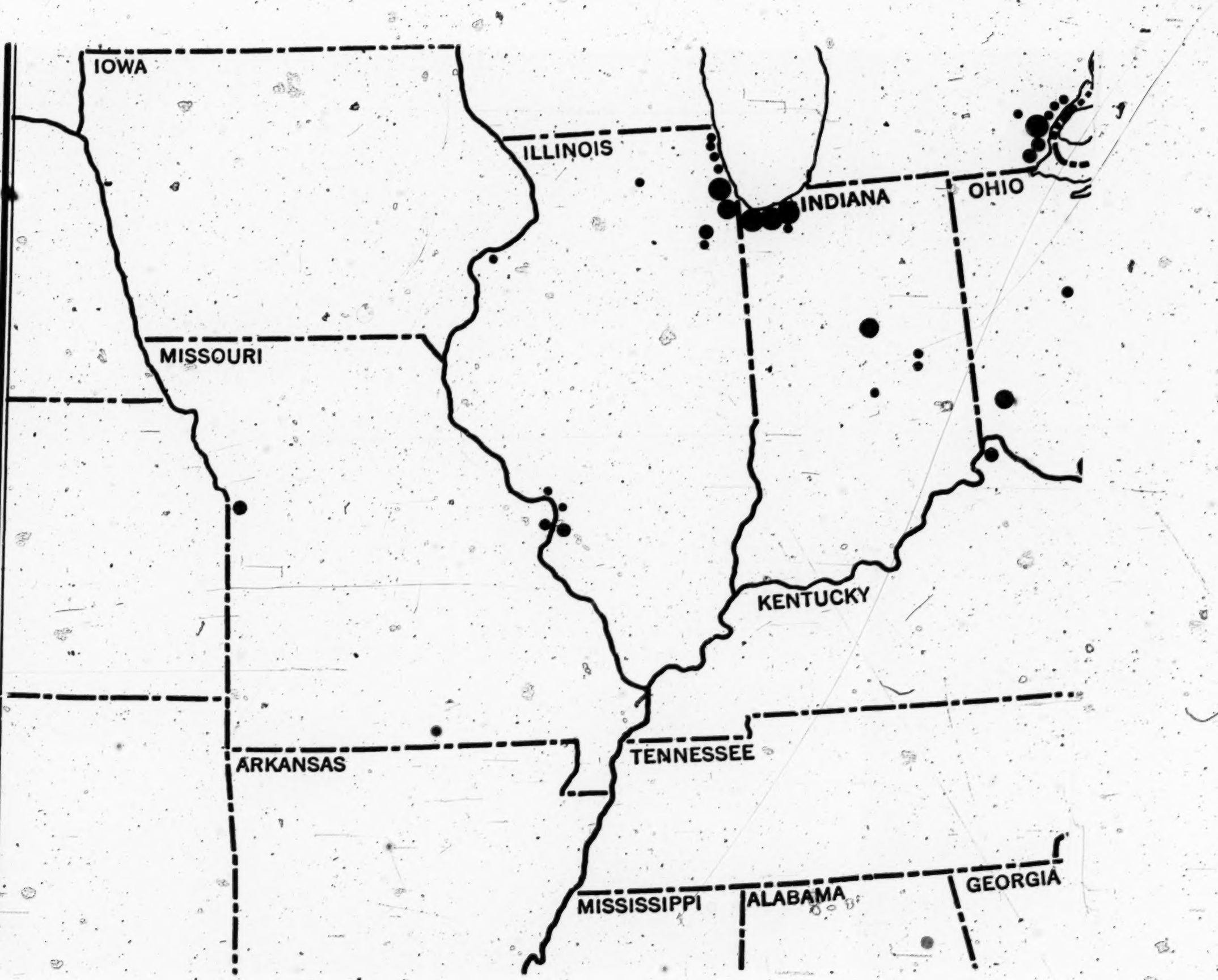
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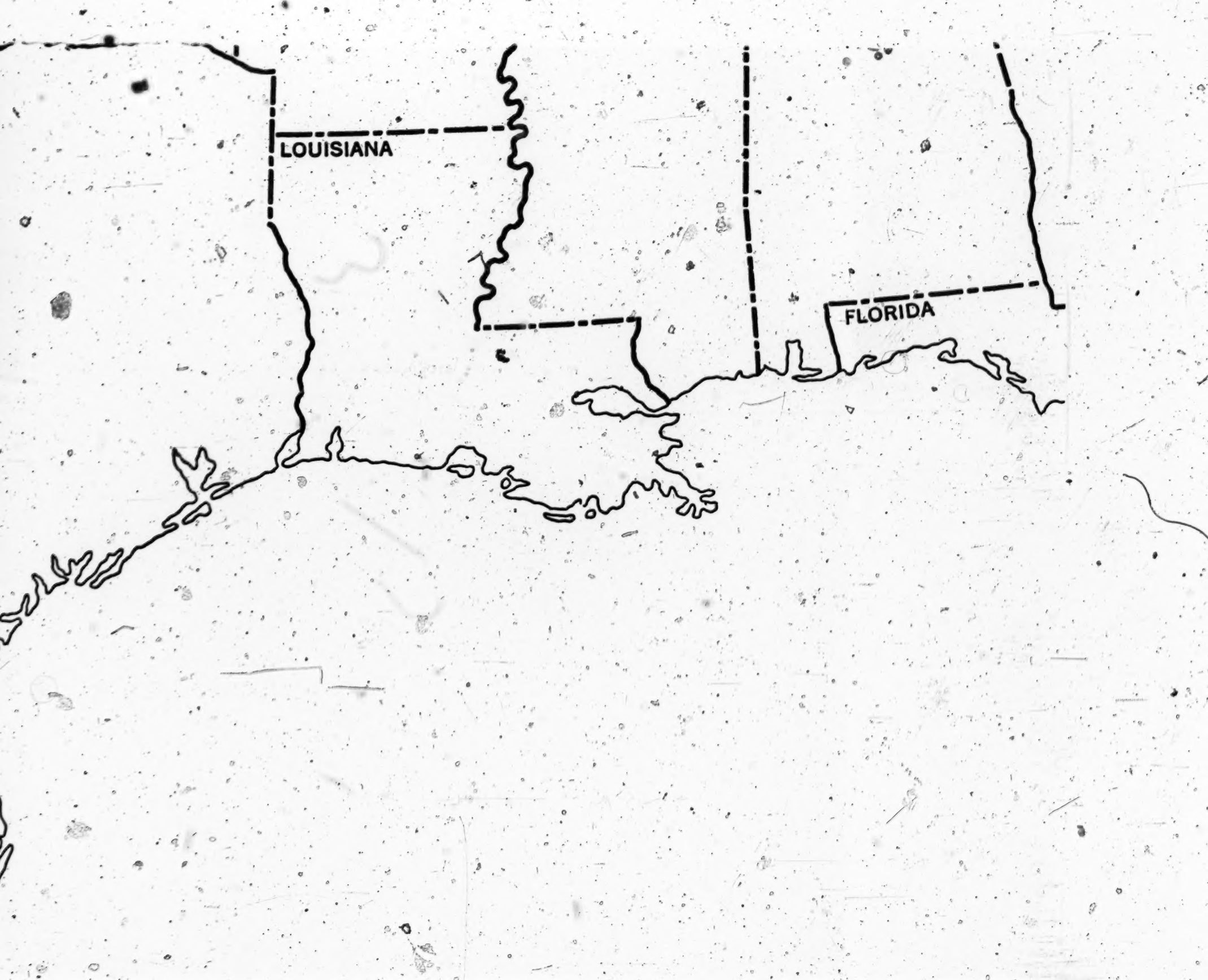
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